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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,745

01/30/2004

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/767,745
Filing Date: January 30, 2004
Appellant(s): BAUER, CHRISTIAN

MAILED

SEP 05 2007

GROUP 3600

Christian Bauer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/17/06 appealing from the Office action mailed 7/05/05.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,464,179	Ruckwardt	11-1995
4,441,677	Byerly	4-1984
3,126,184	Kropp	3-1964

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 12-27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 5,464,179 to Ruckwardt in view of US Patent # 4,441,677 to Byerly.

Ruckwardt teaches a retaining member (1) comprising a base portion (2) attachable to the support, a holding portion (3) connected to the base portion and comprising a recess (17) for holding the elongated element therein. The recess comprises a tubular portion (16) and a plurality of spaced ribs (18-19) extending radially inwardly from the tubular portion.

Furthermore, Ruckwardt teaches the retaining member for supporting an elongated element (col. 1, line 38, tube-shaped parts). The base portion is made of a hard plastic material (col. 2, lines 59-60) and the ribs and tubular portion are made of a softer plastic material (col. 2, lines 61-62).

Ruckwardt teaches the plurality of ribs having first and second ribs but fails to teach the first ribs having a greater radial height and second ribs having a smaller radial height. Byerly teaches the first ribs (32) having a greater radial height and the second ribs (34) having a small radial height. It would have been obvious for one of ordinary skill in the art at the time the

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invention was made to have modified Ruckwardt's first and second ribs to greater height and smaller height as taught by Byerly to increase in friction force for retaining an object within the tubular portion.

Ruckwardt teaches the ribs but fails to teach the ribs are elongated in a circumferential direction of the tubular portion. Byerly teaches the ribs (figure 6) are in the circumferential direction of the tubular portion. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Ruckwardt's plurality of ribs in circumferential direction of the tubular portion as taught by Byerly to improve support for retaining object in the tubular portion.

Ruckwardt teaches having first and second ribs but fails to teach the first ribs having a greater radial height and second ribs having a smaller radial height. Byerly teaches the first ribs (32) having a greater radial height and the second ribs (34) having a small radial height. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Ruckwardt's first and second ribs to greater height and smaller height as taught by Byerly to increase in friction force for retaining an object within the tubular portion.

In regards to claims 17-19, Ruckwardt in view of Byerly teaches the first ribs is greater than the second ribs but fails to teach the first rib having a first width at the top that is smaller than a second width of the second rib at top. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Ruckwardt in view of Byerly's width of first ribs' top to smaller than the second width of the second rib's top to provide designer's choice for size of top to increase friction force for retaining an object within the tubular portion.

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In regards to claim 30, Ruckwardt teaches the retaining member comprising a resilient contact element (20) but fails to teach the resilient contact element is made from the same plastic material as the first and second ribs. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used same plastic material form the first and second ribs for the resilient contact element to provide convenience for inserting screw/bolt therein.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruckwardt in view of Byerly and in further view of US Patent # 3,126,184 to Kropp.

Ruckwardt in view of Byerly teaches the first rib is in convex curve but fails to teach the second rib is in concave curve. Kropp teaches the first rib (56) is in convex curve and the second rib (57) is in concave curve. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Ruckwardt in view of Byerly's second rib with concave curve as taught by Kropp to provide designer's choice for the shape of rib in the retaining member.

(10) Response to Argument

The appellant argues Byerly's invention is intended to be "wrapped" about a bundle of wires or a corrugated tube with two distinct diameters while the base reference with Ruckwardt is directed to supporting a single tube-shaped part which is clearly going to be "pressed" into place and it is not intended to be wrapped about an element such as fuel pipe. The examiner disagrees with the appellant because Ruckwardt and Byerly are analogous arts with holder that is designed to retain tube/pipe on a support structure. The recess in Ruckwardt's invention has same function as Byerly's recess for retaining such as wrapping about the tube/pipe.

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Furthermore, Ruckwardt and Byerly show ribs in the recess however Ruckwardt's ribs do not vary in diameter like Byerly's ribs. The examiner is using Byerly's invention as a secondary reference for modifying Ruckwardt's ribs into vary diameter as taught by Byerly's ribs to provide gripping support for gripping on tube/pipe with grooves on the outer surface and prevent tube/pipe from slipping out of the holder.

The appellant stated the examiner misinterpreted #56 is a convex curve and # 57 is a concave curve in Kropp's invention. Furthermore, the appellant stated "This structure would not lead the hypothetical person of ordinary skill to the conclusion that the tops of the protrusions which are shown in Ruckwardt could be shaped in the manner purported in this rejection." The examiner disagrees with the appellant because the projection part on both edges of element 56 in Kropp's invention are considered as convex curve and element 57 in Kropps's invention clearly shows the curve is in concave configuration for securing pipe/tube therein. Ruckwardt and Kropp are analogous arts for retaining pipe/tube/cable on holder to mount on support surface. Ruckwardt and Kropp teach recess having rib for retaining pipe/tube/cable but Ruckwardt fails to show the rib has concave curve. Since Kropp shows rib having concave curve, it is obvious to have modified Ruckwardt's rib into concave curve as taught by Kropp to prevent the pipe/tube/cable from slipping out of the holder.

(11) Related Proceeding(s) Appendix

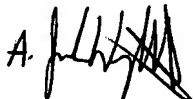
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A. Joseph Wujciak



/ASW/

Conferees:

Carl Friedman



Meredith Petravick /mcp/